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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,080	12/10/2001	Olivier Elsenhans	9793-95	5502

757            7590            07/17/2003  
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60611

EXAMINER
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NGUYEN, SANG H

ART UNIT	PAPER NUMBER
2877	

DATE MAILED: 07/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

IV

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/018,080	ELSENHANS ET AL.
	Examiner Sang H Nguyen	Art Unit 2877

.. The MAILING DATE of this communication appears on the cover sheet with the correspondence address ..

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 June 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 18-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 18-43 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                           | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 . | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Response to Restriction/Election***

1. Applicant's election without traverse of Group I (claims 18-43) filed on 06/27/03 in Paper No. 8 is acknowledged.

The present Office action is made in response to the Restriction/Election (Paper No. 8 of 06/27/03). It is noted that the present application contains claims 18-43 and claims 44-50 have been canceled by the Restriction/Election.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

3. This office acknowledges of the following items from the Applicant: Information Disclosure Statement (IDS) file on 12/10/01 is received and made of record as Paper # 2. The references cited on the PTOL 1449 form have been considered.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the limitation "said first interfering component" in line 13; and "the deviation" in line 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 is not clear because many of symbols have not been defined in claim, for example, in claim 18 lines 6 and 9, the (1,1), (1,n), and (d1) of the symbols are not clear and defined.

Claim 18 is not clear because the term "fitting being" is not clear whether it is "first extinction spectrum" or "an approximated spectrum".

#### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 18-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Witte (U.S. Patent No. 4,267,572).

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Regarding claims 18-43; Witte discloses an apparatus and method for determining the concentration of the components of a sample, comprising:

\* measuring a first extinction spectrum ( $Ep[\lambda]$  at col.3 line 1) of the liquid sample by a spectrophotometer (40 of figure 2) and a spectra memory (12 of figure 2) in a first selected wavelength range  $\lambda = \lambda_1$ ; (figure 1)

\* fitting an approximated spectrum is considered to be reconstructed spectrum constructed from the corrective values and standard spectra ( $Ep'[\lambda]$  at col.3 lines 33-34 and col.5 lines 27-35) to the first measured extinction spectrum ( $Ep[\lambda]$  at col.3 line 1), wherein the approximated spectrum ( $Ep'[\lambda]$ ) being a combination of a predetermined approximated function for background extinction is considered to be extinction spectrum of a standard solution of the component ( $Esk[\lambda]$ ) and a predetermined extinction spectrum  $Es1$  ( $Cs1, \lambda$ ) of a first pure component of concentration  $Cs1$  of the components to be determined;

\* the fitting approximated spectrum being performed by varying the concentration  $Cs1$  of a first interfering component and at least two of the coefficients, so that a deviation between the first measured extinction spectrum ( $Ep[\lambda]$  at col.3 line 1) and the approximated spectrum ( $Ep'[\lambda]$  at col.3 lines 33-34 and col.5 lines 27-35) is minimized for determining the concentration of the first interfering component and the first selected wavelength range being so selected that the concentration  $Cs1$  of the first interfering component can be determined (col.3 line 1 to col.8 line 68). See figures 1-3.

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***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moessner (5,573,952) discloses process for controlling concentration of a solution of a solvent and polymer; Moore et al (5,424,840) discloses *in situ* chlorophyl absorption; Mendelson et al (5,137,023) discloses method and apparatus for monitoring blood analytes noninvasively by pulsatile photoplethysmography; Langhals (4,677,079) discloses process for determining the composition of binary liquid mixture; or Schweitzer et al (DE 4433827) discloses measuring substance parameters in material layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Sang Nguyen whose telephone number (703)308-6426. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Frank Font, can be reached on (703)308-4881. The fax phone number for the organization where this application or proceeding is assigned is (703)308-7722 or 7724.

*SN*

Sang Nguyen/SN

July 9, 2003

*Frank G. Font*

Frank G. Font  
Supervisory Patent Examiner  
Art Unit 2877  
Technology Center 2800